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SJC-13328

RIAN WATERS vs. AIDAN KEARNEY.

November 3, 2022.

Supreme Judicial Court, Superintendence of inferior courts.  
Moot Question. Practice, Civil, Moot case.

The petitioner, Rian Waters, appeals from a judgment of a single justice of this court dismissing as moot his petition pursuant to G. L. c. 211, § 3. We affirm.

Waters commenced an action against the respondent, Aidan Kearney, and several other parties in the trial court in May 2018, alleging claims of, among other things, libel, slander, intentional infliction of emotional distress, and fraud. After various proceedings in both the trial court and the Appeals Court, the only remaining claim was one of libel against Kearney. In August 2022, shortly before a scheduled pretrial conference in the trial court, Waters filed his petition pursuant to G. L. c. 211, § 3, in which he asked the court to sanction Kearney (by "reaching and applying" Kearney's "ghost company's" assets); detain Kearney for criminal contempt (until he transfers his assets to Waters); and to hold an evidentiary hearing, order the trial court to hold an evidentiary hearing, or appoint a "private prosecutor" to investigate obstruction. While the petition was pending, a judge in the trial court dismissed without prejudice the underlying case for failure to prosecute. On that basis, the single justice then dismissed Waters's G. L. c. 211, § 3, petition as moot.

Waters has now filed what appears to have been intended as a memorandum and appendix pursuant to S.J.C. Rule 2:21, as amended, 434 Mass. 1301 (2001). Technically speaking, rule 2:21 does not apply in this situation because Waters is not

challenging any interlocutory rulings of the trial court. It is nonetheless clear that he is not entitled to relief in this court. Waters argues, in his memorandum, that the case is not moot on the basis that -- his argument seems to be -- he has appealed from the dismissal of the case in the trial court. Where the issues that Waters raised in his petition relate specifically to that underlying case, however, the dismissal of that case consequentially renders those issues moot, regardless of whether Waters appeals from the judgment of dismissal. If Waters believes that the issues raised in his G. L. c. 211, § 3, petition relate in any way to the trial court's decision to dismiss the case, he is free to raise those issues in his appeal from that dismissal. The single justice did not err or abuse his discretion in dismissing the G. L. c. 211, § 3, petition on the basis that it was moot.<sup>1</sup>

Judgment affirmed.

The case was submitted on the papers filed, accompanied by a memorandum of law.

Rian Waters, pro se.

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<sup>1</sup> In light of this decision, we need not act on Waters's motion to consolidate this case with his appeal from the judgment of dismissal.